

Michigan Poverty Law Program's Comments on HB 4719 (bed bug treatment and its costs)

HB 4719 would allow tenants to be made totally liable for the costs of treating and controlling bed bug infestations, without any evidence that a tenant caused the infestation. This change would be a **radical departure from longstanding Michigan residential landlord-tenant law and public policy** that makes landlords primarily responsible for maintaining rental premises and keeping them fit for the use intended.

If enacted, HB 4719 would become the **first tenant unfriendly bed bug law in the U.S.** Recent laws in other states heighten landlord responsibility for dealing with bed bugs, including paying for the cost of treating them. (see, e.g., New Hampshire Rev. Stat. §540:13-e, eff. Jan 1. 2014; Maine Rev. Stat. §6021-A, eff. 2009, 2011; see also, www.ncsl.org – “bedbugs”)

This bill also defies established science about bed bug behavior, as discussed below.

HB 4719 gives tenants few new benefits, but tremendous new burdens

While several provisions in HB 4719 are troublesome, its most pernicious and significant is Sec. 1F.(3) (p. 6, line 24). This provision would permit a landlord and tenant to assign in a written agreement the responsibility for “costs resulting from an infestation, including, but not limited to, costs of control or treatment.” Almost all residential landlord-tenant leases are take it or leave it “adhesion” contracts written by a landlord and imposed on a tenant, reflecting the parties’ hugely unequal bargaining power (which is only accentuated for low income tenants). It’s very safe to predict that when a lease addresses bed bugs, **tenants will almost always be “assigned” responsibility for bed bug control/treatment costs.**¹

Not only would the bill permit tenants being made solely and strictly liable for bed bug control/treatment costs (and in doing so, alter the legal terrain of strict liability), whether or not they in any way caused or were at fault for that infestation, it would deny them a say in the “control protocol” and threaten them with eviction for a failure to comply with the protocol. Sec 1E.(5) and (6)(p. 6, line 8). **Tenants would have to pay for, but have no say about bed bug treatment.** While the bill’s requirements that, upon report or discovery of a possible infestation, landlords arrange for inspection and treatment and control measures have some merit, in isolation from the rest of the bill, it’s a lot easier to do something when someone else has to pay for it.

As well, “if a tenant or the tenant’s guest causes an infestation”, the tenant would not only have to pay control/treatment costs for her rental unit, but also for “other areas where bed bugs have spread.” Such costs would be “considered additional rent owed by the tenant.” (Sec. 1F.(1) (p. 6, line 17. Bed bug behavior, as discussed below, makes determining causation extremely difficult. This

¹ Michigan’s Truth in Renting Act recognizes the overreach that adhesion contracts invite and prohibits several types of extremely one-sided residential lease provisions.

difficulty strongly favors adhering to the **general rule**, followed by other states in **their bed bug legislation** - that **landlords are primarily responsible for bed bug treatment and its costs**.

The bill also would require tenants, despite lacking expertise, to inspect a rental unit for bedbugs at move-in, without requiring landlords to do a pre or post-tenancy inspection. Sec 1E.(2), p. 5, line 23. The bill suggests that, if within 2 days of moving in a tenant does not report an infestation, the unit would be deemed “free from bed bugs”, and the tenant would be responsible for keeping it that way. Declaring a unit bed bug free on that timetable contradicts the known science about bed bugs, as discussed below.

The regime that Sec 1E and F would establish would not only be **unfair and unreasonable**, it would lack any sound public policy justification, **again**, as reflected by existing Michigan law and the recent legislation in other states that much more constructively, realistically, and sensibly addresses bed bug responsibility issues.²

Bed bug science doesn’t support HB 4719, and the bill wouldn’t remedy the bed bug problem

Among the many findings of the “Michigan Manual for the Prevention and Control of Bed Bugs” (the “Manual”)³, among other credible sources of information about bed bugs, is that bed bugs can go for long periods (up to one year under optimal conditions) between blood meals. See, Manual, p. 4. The Manual also makes clear that an infestation in one apartment can spread to adjacent units or throughout a building. Manual, p. 53. The dormancy and mobility of bed bugs makes determining causation or responsibility very elusive, and makes the obligations HB 4719 would impose on **tenants** unfair and unsound, even more so for tenants in multifamily properties.

Further, this bill would create a financial disincentive to tenants reporting infestation. If a tenant knows she’ll be responsible for the costs of bed bug control/treatment, she’ll be less likely to report an infestation, reducing the likelihood of an infestation being properly addressed. Another likely outcome of the bill’s enactment would be an increase in evictions of tenants, especially low income renters, who couldn’t afford to pay bed bug treatment costs, resulting in more homeless families in Michigan

Bed bugs are a real and significant problem in Michigan residential rental housing, among other locations. Unfortunately, HB 4719 does not offer a sound, fair or effective remedy to this problem, and would put a hugely unfair, disproportionate and unjustifiable burden of the problem on tenants.

² The bill would also preempt local ordinances concerning bed bug control/treatment (Sec. 1G.)

³ http://www.michigan.gov/documents/emergingdiseases/Bed_Bug_Manual_v1_full_reduce_326605_7.pdf (Version 1.01 - September 2010) The Michigan Department of Community Health and the broadly representative Michigan Bed Bug Working Group published this highly respected and valuable 118 page resource. As its subtitle accurately states, it provides “[c]omprehensive guidance to identify, treat, manage and prevent bed bugs”.